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September 22, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Mail Stop 1170  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Dear Mr. Caton:

Re: *PP Docket No. 93-253, Implementation of Section 309(j) of the Communications Act - Competitive Bidding*

On behalf of Pacific Bell Mobile Services, please find enclosed an original and six copies of its *"Reply To Comments/Oppositions To Petitions For Reconsideration of the Fifth Report and Order"* in the above proceeding.

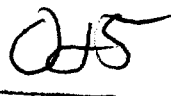
Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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SEP 22 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 309(j)  
of the Communications Act -  
Competitive Bidding

PP Docket No. 93-253

**REPLY OF PACIFIC BELL MOBILE SERVICES TO COMMENTS/OPPOSITIONS TO  
PETITIONS FOR RECONSIDERATION OF THE FIFTH REPORT AND ORDER**

Pacific Bell Mobile Services hereby replies to  
selected issues raised in the Oppositions/Comments on the Fifth  
Report and Order in the above-captioned proceeding.

I. **MAJOR TELCOS SHOULD BE PERMITTED TO INVEST IN AND OFFER  
MANAGEMENT ASSISTANCE TO DESIGNATED ENTITIES.**

DCR Communications, Inc. ("DCR") argues that major  
cellular and telephone companies should not be allowed to own or  
acquire any minority interests in the entrepreneurs block,  
should not be allowed to acquire any interest in the future and  
that cellular companies should not be permitted to manage PCS  
systems on behalf of licensees in the entrepreneurs block.<sup>1</sup>

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<sup>1</sup> DCR, p. 6.

DCR's major objection appears to be focused on cellular carriers.

[T]he cellular company's condition for investment may well be the use of a technology compatible with its cellular technology, not with the technology of other PCS carriers. The PCS company may have other obligations to its major investor that will preclude it from becoming part of a viable national PCS network....

....

....

...If the major cellular companies are allowed to fund the entrepreneurs - and worse, even manage them - then the entire entrepreneur block could be a sham.<sup>2</sup>

The Commission's rules are carefully constructed to prevent a "sham." Passive investment and voting stock are strictly limited to ensure that the licensee retains control.<sup>3</sup> Moreover, the Commission has strongly stated that it will not tolerate shams and it will audit licenses to ensure that its rules are being complied with.<sup>4</sup> Consequently, we believe that DCR's concern is exaggerated.

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<sup>2</sup> Id. at p. 7.

<sup>3</sup> 47 CFR §§24.709, 24.720.

<sup>4</sup> In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, paras. 164, 168, 190 (Fifth Report and Order).

DCR's concern is certainly misplaced with respect to telephone companies without cellular interests such as Pacific Bell. If we were to invest or provide management assistance to a designated entity ("DE") we would have no incentive at all to impede the DE's competition with cellular. On the contrary, we would have every incentive to ensure that our investment is maximized through the DE's vigorous competition with cellular companies.

In addition, the Commission's rules recognize that designated entities need access to capital. Prohibiting passive investment by telephone companies is contrary to the Commission's goal of addressing funding difficulties faced by designated entities. Such a prohibition would deny designated entities access to a significant source of capital. Likewise, telephone companies have valuable expertise with regard to the construction and maintenance of telecommunications networks. As we stated in our Petition for Reconsideration, many designated entities will desire to obtain that expertise through management contracts. There is no valid reason to deny access to this source of expertise.

II. RESALE SHOULD NOT BE REQUIRED AMONG FACILITIES BASED LICENSEES SERVING THE SAME TERRITORY.

MasTec is concerned that the licensees in the A and B block should not have too great a head start over licensees in the C and F block.<sup>5</sup> They suggest that one alternative would be to require resale of PCS services provided on the A and B blocks for designated entities on the C and F blocks.<sup>6</sup> We disagree. While we appreciate MasTec's concern, we do not believe the head start will be long enough to justify a resale requirement. It appears now that the interval between auctions should be between two to four months. Moreover, the construction requirements and the need to recoup auction expenses are such that all licensees will want to get their networks up and running as soon as possible. Consequently, there is no reason to require facilities based licensees serving the same territory to offer their services for resale by their in-territory facilities based competitors. We have no objection to unlimited resale of PCS services by non-licensees.

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<sup>5</sup> MasTec, Inc., p. 17.

<sup>6</sup> Id. at n.32.

III. PRIOR APPROVAL OF THE FCC SHOULD NOT BE REQUIRED TO EXCEED ANTENNA HEIGHT LIMIT.

The Personal Communication Industry Association ("PCIA") supports American Personal Communication's ("APC") request for reconsideration of rule 24.816 that requires prior FCC approval of antenna structures exceeding 200 feet above ground level.<sup>7</sup> We agree that the rule could impose delays in the introduction of PCS service. FAA approval is also required and that approval should be sufficient.<sup>8</sup> This is consistent with rules for antennas that exceed height restrictions for cellular service.<sup>9</sup> APC's request for reconsideration of this rule should be granted.

IV. THE COMMISSION SHOULD AUCTION THE D AND E BTA LICENSES THAT CORRESPOND TO THE SAME TERRITORY FOR WHICH PIONEER PREFERENCES WERE AWARDED SIMULTANEOUSLY WITH THE REMAINING MTA.

Omnipoint opposes our recommendation that in those three areas where there is no A block MTA license because of a pioneer preference award, that the corresponding D and E BTA

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<sup>7</sup> PCIA, pp. 1-3.

<sup>8</sup> 47 CFR §24.816(d).

<sup>9</sup> 47 CFR §22.117(b).

licenses be auctioned off simultaneously with the B block MTA license.<sup>10</sup>

Omnipoint states that the Commission has already rejected this argument when it decided to hold separate auctions for A and B blocks and for the D and E blocks.<sup>11</sup> Omnipoint quotes the Commission that pursuing the D and E blocks as a back-up strategy to acquiring an A or B license "is not likely to be a widely used strategy."<sup>12</sup> However, that conclusion was premised on the fact that there would be two substitutable licenses auctioned at the same time. In those areas in which there was a pioneer preference award there will be only one 30 MHz license. Since there is no other MTA substitutable license, the corresponding D and E licenses do offer a realistic back-up strategy. As Professor Milgrom explained in his statement, expanding the MTA auction to include licenses for the D and E band BTA licenses "would allow companies to evaluate their most closely substitutable options in a single auction...

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<sup>10</sup> Omnipoint, pp. 13-15.

<sup>11</sup> Id. at p. 13.

<sup>12</sup> Id. at 13 quoting para. 40 of the Fifth Report and Order.

The result would likely be a more rational and economically efficient assignment of licenses."<sup>13</sup>

Omnipoint states that we fail to address the administrative cost of our recommendation.<sup>14</sup> The Commission concluded that auctioning 99 MTA licenses along with 986 BTA licenses would be difficult to administer.<sup>15</sup> Our recommendation would add only 6 licenses of the 986 to the first auction. This increases the number sold in the first auction from 99 to 105. This should not impose a significant administrative burden.

V. CONCLUSION.

For the reasons outlined in the foregoing, the Commission should continue to permit telephone companies to hold passive interests in designated entities and to provide management assistance via management contracts. In addition, resale should not be required among PCS licensees serving the same territory. FAA approval of antennas that exceed height limits should be sufficient. Finally, we respectfully request that the Commission simultaneously auction D and E BTA licenses

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<sup>13</sup> Petition for Reconsideration and Clarification of PBMS, Statement of Paul R. Milgrom, p. 2, August 22, 1994.

<sup>14</sup> Omnipoint, p. 14.

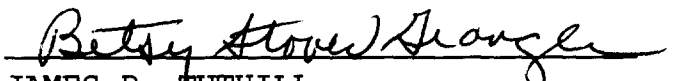
<sup>15</sup> Fifth Report and Order, para. 40.



that correspond to the same territory for which MTA pioneer preferences were awarded.

Respectfully submitted,

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Date: September 22, 1994

## **CERTIFICATE OF SERVICE**

**I, Alex Kositsky, do hereby certify that a copy of the foregoing Reply of Pacific Bell Mobile Services to Comments/Oppositions to Petitions for Reconsideration of the Fifth Report and Order was mailed this 22nd day of September, 1994, via first class United States mail, postage prepaid to the parties on the attached service list.**

  
\_\_\_\_\_  
Alex Kositsky

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**September 22, 1994**

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